

1 JAURIGUE LAW GROUP
2 Michael J. Jaurigue
3 S. Sean Sahabi
4 Nicole R. Clancy
5 300 West Glenoaks Boulevard, Suite 300
6 Glendale, California 91202
7 Telephone: (818) 630-7280
8 Facsimile: (818) 879-1697
9 michael@jlglawyers.com
10 nicole@jlglawyers.com
11 sean@jlglawyers.com

12 Attorney for Plaintiff
13 Cheng Saetern

14 SEYFARTH SHAW LLP

15 Nicole Baarts (SBN 226733)
16 560 Mission Street, 31st Floor
17 San Francisco, California 94105
18 Telephone: (415) 397-2823
19 Facsimile: (415) 397-8549
20 nbaarts@seyfARTH.com

21 SEYFARTH SHAW LLP
22 Kristin N. Ivanco (SBN 294993)
23 400 Capitol Mall, Suite 2300
24 Sacramento, California 95814-4428
25 Telephone: (916) 448-0159
26 Facsimile: (916) 558-4839
27 kivanco@seyfARTH.com

28 Attorneys for Defendant
18 AIRGAS USA, LLC

20
21 UNITED STATES DISTRICT COURT
22 EASTERN DISTRICT OF CALIFORNIA

23 CHENG SAETERN, an individual

24 Plaintiff,

25 v.

26 AIRGAS USA, LLC; and DOES 1
27 through 50, inclusive,

28 Defendant.

Case No. 2:24-cv-00815-DAD-CKD
(Sacramento County Superior Court
Case No. 23CV013666)

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

Action Filed: December 18, 2023
Trial Date: None Set

STIPULATED PROTECTIVE ORDER

Plaintiff Cheng Saetern (“Plaintiff” and Airgas USA, LLC (“Airgas”) (together, “the Parties”) submit this Stipulated Protective Order to the Court for entry in this case, as follows:

1. PURPOSES AND LIMITATIONS

6 Disclosure and discovery activity in this action are likely to involve production
7 of confidential, proprietary, or private information for which special protection from
8 public disclosure and from use for any purpose other than prosecuting this litigation
9 may be warranted. Accordingly, the parties hereby stipulate to and petition the court to
10 enter the following Stipulated Protective Order. The parties acknowledge that this Order
11 does not confer blanket protections on all disclosures or responses to discovery and that
12 the protection it affords from public disclosure and use extends only to the limited
13 information or items that are entitled to confidential treatment under the applicable legal
14 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
15 Stipulated Protective Order does not entitle them to file confidential information under
16 seal; Local Rules 140 and 141 set forth the procedures that must be followed and the
17 standards that will be applied when a party seeks permission from the court to file
18 material under seal or redacted.

2. DEFINITIONS

20 2.1 Challenging Party: a Party or Non-Party that challenges the designation
21 of information or items under this Order.

22 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
23 it is generated, stored or maintained) or tangible things that qualify for protection under
24 Federal Rule of Civil Procedure 26(c).

25 2.3 Counsel (without qualifier): Outside Counsel of Record and House
26 Counsel (as well as their support staff).

27 2.4 Designating Party: a Party or Non-Party that designates information or
28 items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL.”

2 2.5 Disclosure or Discovery Material: all items or information, regardless of
3 the medium or manner in which it is generated, stored, or maintained (including, among
4 other things, testimony, transcripts, and tangible things), that are produced or generated
5 in disclosures or responses to discovery in this matter.

6 2.6 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
8 expert witness or as a consultant in this action.

9 2.7 House Counsel: attorneys who are employees of a party to this action.
10 House Counsel does not include Outside Counsel of Record or any other outside
11 counsel.

12 2.8 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
15 this action but are retained to represent or advise a party to this action and have appeared
16 in this action on behalf of that party or are affiliated with a law firm which has appeared
17 on behalf of that party.

18 2.10 Party: any party to this action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this action.

23 2.12 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
26 their employees and subcontractors.

27 2.13 Protected Material: any Disclosure or Discovery Material that is
28 designated as “CONFIDENTIAL.”

1 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected
5 Material (as defined above), but also (1) any information copied or extracted from
6 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
7 Material; and (3) any testimony, conversations, or presentations by Parties or their
8 Counsel that might reveal Protected Material. However, the protections conferred by
9 this Stipulation and Order do not cover the following information: (a) any information
10 that is in the public domain at the time of disclosure to a Receiving Party or becomes
11 part of the public domain after its disclosure to a Receiving Party as a result of
12 publication not involving a violation of this Order, including becoming part of the
13 public record through trial or otherwise; and (b) any information known to the
14 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
15 disclosure from a source who obtained the information lawfully and under no obligation
16 of confidentiality to the Designating Party. Any use of Protected Material at trial shall
17 be governed by a separate agreement or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
21 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
22 later of (1) dismissal of all claims and defenses in this action, with or without prejudice;
23 and (2) final judgment herein after the completion and exhaustion of all appeals,
24 rehearings, remands, trials, or reviews of this action, including the time limits for filing
25 any motions or applications for extension of time pursuant to applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.
28 Each Party or Non-Party that designates information or items for protection under this

1 Order must take care to limit any such designation to specific material that qualifies
2 under the appropriate standards. The Designating Party must designate for protection
3 only those parts of material, documents, items, or oral or written communications that
4 qualify – so that other portions of the material, documents, items, or communications
5 for which protection is not warranted are not swept unjustifiably within the ambit of
6 this Order.

7 Mass, indiscriminate, or routinized designations are prohibited. Designations that
8 are shown to be clearly unjustified or that have been made for an improper purpose
9 (e.g., to unnecessarily encumber or retard the case development process or to impose
10 unnecessary expenses and burdens on other parties) expose the Designating Party to
11 sanctions.

12 If it comes to a Designating Party's attention that information or items that it
13 designated for protection do not qualify for protection, that Designating Party must
14 promptly notify all other Parties that it is withdrawing the mistaken designation.

15 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
16 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
17 or ordered, Disclosure or Discovery Material that qualifies for protection under this
18 Order must be clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) For information in documentary form (e.g., paper or electronic documents,
21 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
22 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
23 protected material. If only a portion or portions of the material on a page qualifies for
24 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
25 by making appropriate markings in the margins).

26 A Party or Non-Party that makes original documents or materials available for
27 inspection need not designate them for protection until after the inspecting Party has
28 indicated which material it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be deemed
2 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
3 copied and produced, the Producing Party must determine which documents, or portions
4 thereof, qualify for protection under this Order. Then, before producing the specified
5 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page
6 that contains Protected Material. If only a portion or portions of the material on a page
7 qualifies for protection, the Producing Party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings,
10 that the Designating Party identify on the record, before the close of the deposition,
11 hearing, or other proceeding, all protected testimony. When it is impractical to identify
12 separately each portion of testimony that is entitled to protection and it appears that
13 substantial portions of the testimony may qualify for protection, the Designating Party
14 may invoke on the record (before the deposition, hearing, or other proceeding is
15 concluded) a right to have up to 21 days to identify the specific portions of the testimony
16 as to which protection is sought and to specify the level of protection being asserted.
17 Only those portions of the testimony that are appropriately designated for protection
18 within the 21 days shall be covered by the provisions of this Stipulated Protective Order.
19 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
20 afterwards if that period is properly invoked, that the entire transcript shall be treated as
21 “CONFIDENTIAL.”

22 Parties shall give the other parties notice if they reasonably expect a
23 deposition, hearing or other proceeding to include Protected Material so that the other
24 parties can ensure that only authorized individuals who have signed the
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
26 proceedings. The use of a document as an exhibit at a deposition shall not in any way
27 affect its designation as “CONFIDENTIAL.”

28 Transcripts containing Protected Material shall have an obvious legend on the

1 title page that the transcript contains Protected Material, and the title page shall be
2 followed by a list of all pages (including line numbers as appropriate) that have been
3 designated as Protected Material and the level of protection being asserted by the
4 Designating Party. The Designating Party shall inform the court reporter of these
5 requirements. Any transcript that is prepared before the expiration of a 21-day period
6 for designation shall be treated during that period as if it had been designated
7 “CONFIDENTIAL” in its entirety unless otherwise agreed. After the expiration of that
8 period, the transcript shall be treated only as actually designated.

9 (c) for information produced in some form other than documentary and for
10 any other tangible items, that the Producing Party affix in a prominent place on the
11 exterior of the container or containers in which the information or item is stored the
12 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
13 warrant protection, the Producing Party, to the extent practicable, shall identify the
14 protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
16 failure to designate qualified information or items does not, standing alone, waive the
17 Designating Party’s right to secure protection under this Order for such material. Upon
18 timely correction of a designation, the Receiving Party must make reasonable efforts to
19 assure that the material is treated in accordance with the provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time. Unless a prompt challenge to a Designating
23 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
24 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
25 litigation, a Party does not waive its right to challenge a confidentiality designation by
26 electing not to mount a challenge promptly after the original designation is disclosed.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
28 resolution process by providing written notice of each designation it is challenging and

1 describing the basis for each challenge. To avoid ambiguity as to whether a challenge
2 has been made, the written notice must recite that the challenge to confidentiality is
3 being made in accordance with this specific paragraph of the Protective Order. The
4 parties shall attempt to resolve each challenge in good faith and must begin the process
5 by conferring directly (in voice to voice dialogue; other forms of communication are
6 not sufficient) within 14 days of the date of service of notice. In conferring, the
7 Challenging Party must explain the basis for its belief that the confidentiality
8 designation was not proper and must give the Designating Party an opportunity to
9 review the designated material, to reconsider the circumstances, and, if no change in
10 designation is offered, to explain the basis for the chosen designation. A Challenging
11 Party may proceed to the next stage of the challenge process only if it has engaged in
12 this meet and confer process first or establishes that the Designating Party is unwilling
13 to participate in the meet and confer process in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
15 court intervention, the Designating Party may file and serve a motion to retain
16 confidentiality within 21 days of the initial notice of challenge or within 14 days of the
17 parties agreeing that the meet and confer process will not resolve their dispute,
18 whichever is earlier. In addition, the Challenging Party may file a motion challenging a
19 confidentiality designation at any time if there is good cause for doing so, including a
20 challenge to the designation of a deposition transcript or any portions thereof.

21 Until the dispute is resolved by the Court, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing
23 Party's designation until the court rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
26 disclosed or produced by another Party or by a Non-Party in connection with this case
27 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
28 Material may be disclosed only to the categories of persons and under the conditions

1 described in this Order. When the litigation has been terminated, a Receiving Party must
2 comply with the provisions of section 13 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
8 may disclose any information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to
11 disclose the information for this litigation and who have signed the “Acknowledgment
12 and Agreement to Be Bound” that is attached hereto as Exhibit A;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
15 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
17 is reasonably necessary for this litigation and who have signed the “Acknowledgment
18 and Agreement to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock
21 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
22 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
26 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by
27 the court. Pages of transcribed deposition testimony or exhibits to depositions that
28 reveal Protected Material must be separately bound by the court reporter and may not

1 be disclosed to anyone except as permitted under this Stipulated Protective Order.

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information.

4 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
5 **OTHER LITIGATION**

6 If a Party is served with a subpoena or a court order issued in other litigation that
7 compels disclosure of any information or items designated in this action as
8 “CONFIDENTIAL,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall
10 include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue
12 in the other litigation that some or all of the material covered by the subpoena or order
13 is subject to this Protective Order. Such notification shall include a copy of this
14 Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by
16 the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with the
18 subpoena or court order shall not produce any information designated in this action as
19 “CONFIDENTIAL” before a determination by the court from which the subpoena or
20 order issued, unless the Party has obtained the Designating Party’s permission. The
21 Designating Party shall bear the burden and expense of seeking protection in that court
22 of its confidential material – and nothing in these provisions should be construed as
23 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
24 from another court.

25 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
26 **IN THIS LITIGATION**

27 (a) The terms of this Order are applicable to information produced by a Non-
28 Party in this action and designated as “CONFIDENTIAL.” Such information produced

1 by Non-Parties in connection with this litigation is protected by the remedies and relief
2 provided by this Order. Nothing in these provisions should be construed as prohibiting
3 a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to produce
5 a Non-Party's confidential information in its possession, and the Party is subject to an
6 agreement with the Non-Party not to produce the Non-Party's confidential information,
7 then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the Non-Party that
9 some or all of the information requested is subject to a confidentiality agreement with
10 a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Stipulated
12 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
13 specific description of the information requested; and

14 (3) make the information requested available for inspection by the Non-
15 Party.

16 (c) If the Non-Party fails to object or seek a protective order from this court within
17 14 days of receiving the notice and accompanying information, the Receiving Party may
18 produce the Non-Party's confidential information responsive to the discovery request.
19 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
20 any information in its possession or control that is subject to the confidentiality
21 agreement with the Non-Party before a determination by the court. Absent a court order
22 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
23 in this court of its Protected Material.

24 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
28 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve

1 all unauthorized copies of the Protected Material, (c) inform the person or persons to
2 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
3 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
4 that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production without prior
12 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
13 parties reach an agreement on the effect of disclosure of a communication or
14 information covered by the attorney-client privilege or work product protection, the
15 parties may incorporate their agreement in the stipulated protective order submitted to
16 the court.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground not addressed in this
23 Stipulated Protective Order. Similarly, no Party waives any right to object on any
24 ground to use in evidence of any of the material covered by this Protective Order.

25 12.3 Filing Protected Material. Without written permission from the
26 Designating Party or a court order secured after appropriate notice to all interested
27 persons, a Party may not file in the public record in this action any Protected Material.
28 A Party that seeks to file under seal any Protected Material must comply with Local

1 Rule 141. Protected Material may only be filed under seal pursuant to a court order
2 authorizing the sealing of the specific Protected Material at issue. If the Receiving Party
3 seeks to file Protected Material, the Receiving Party must provide the Designating Party
4 with sufficient notice in advance of filing to allow the Designating Party to seek an
5 order of sealing or redaction from the Court.

6 **13. FINAL DISPOSITION**

7 Within 60 days after the final disposition of this action, as defined in paragraph
8 4, each Receiving Party must return all Protected Material to the Producing Party or
9 destroy such material. As used in this subdivision, “all Protected Material” includes all
10 copies, abstracts, compilations, summaries, and any other format reproducing or
11 capturing any of the Protected Material. Whether the Protected Material is returned or
12 destroyed, the Receiving Party must submit a written certification to the Producing
13 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
14 deadline that (1) identifies (by category, where appropriate) all the Protected Material
15 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
16 any copies, abstracts, compilations, summaries or any other format reproducing or
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
18 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
19 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
20 expert reports, attorney work product, and consultant and expert work product, even if
21 such materials contain Protected Material. Any such archival copies that contain or
22 constitute Protected Material remain subject to this Protective Order as set forth in
23 Section 4.

24 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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1 DATED: JAURIGUE LAW GROUP
2

3 By: /s/Nicole R. Clancy (as authorized 10/16/24)

4 Michael J. Jaurigue
5 S. Sean Sahabi
6 Nicole R. Clancy
7 Attorneys for Plaintiff
8 CHENG SAETERN

9 DATED: SEYFARTH SHAW LLP
10

11 By /s/Kristin N. Ivanco

12 Nicole A. Baarts
13 Kristin N. Ivanco
14 Attorneys for Defendants
15 AIRGAS USA, LLC

ORDER

2 **GOOD CAUSE APPEARING**, the Court hereby approves this Stipulation and
3 Protective Order with the clarification that the court will not retain jurisdiction to
4 enforce the terms of this protective order after the Clerk has closed the action. See
5 Local Rule 141.1(f).

IT IS SO ORDERED.

Dated: October 25, 2024

Carolyn K. Delaney
CAROLYN K. DELANEY

CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on [date] in the case of *Cheng Saetern v. Airgas USA, LLC, et al.*, Case No. 2:24-cv-00815-DAD-CKD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: